

BERNARD A. HOLMAN

IBLA 80-895

Decided May 4, 1982

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES 20055 Mississippi.

Vacated and remanded.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Generally

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

2. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Generally

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

APPEARANCES: William H. Bode, Esq., Michael D. Alexander, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Bernard A. Holman has appealed from a decision dated July 22, 1980, of the Eastern States Office, Bureau of Land Management (BLM), which rejected his noncompetitive oil and gas lease offer ES 20055 for 640.48 acres of land in Yazoo County, Mississippi. BLM rejected appellant's offer on the ground

that the surface management agency (Fish and Wildlife Service) had withheld its consent to lease.

The lease application described the land sought as T. 11 N., R. 4 W., Choctaw meridian, all of sec. 24, or 640.48 acres. The file contains a memorandum from Alan C. Bonsack, senior staff specialist, Realty Refuges and Wildlife Resources, Fish and Wildlife Service (FWS), Atlanta, Georgia, returning the application of appellant for the following stated reason: "By regulations, oil and gas leasing is not permitted on lands in the National Wildlife Refuge System where the United States owns the oil and gas rights. These regulations are cited in Title 43, Code of Federal Regulations, Sections 3101.3 - 1, 2, and 3." The memorandum is headed "LA-Mississippi, Panther Swamp NWR, Eisner, Robert (22)."

On appeal appellant contends that the lease should be issued because he applied only 9 months after the land was acquired by FWS and he does not think anything has been done in this area by FWS. Further, he believes oil is there, and he does not think issuance of the lease, drilling, and possible development of an oil field in sec. 24 would materially affect the plans FWS has for "this large area."

[1] The applicable regulation, 43 CFR 3101.3-3, states:

§ 3101.3-3 Reserved and segregated lands.

(a) Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(1) Leasing. No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau of Land Management on a form approved by the Director.

43 CFR 3101.3-1 provides:

§ 3101.3-1 Drainage.

In instances where it is determined by the Geological Survey that any of the lands mentioned in § 3101.3-3 of this section

and defined in this section as not available for leasing are subject to drainage, the Bureau of Land Management, with the concurrence of the U.S. Fish and Wildlife Service, will process an offering inviting competitive bids in accordance with the then existing regulations relating to competitive oil and gas leasing. Such leases shall be issued only upon approval by the Secretary of the Interior and shall contain such stipulations as are necessary to assure that leasing activities and drilling shall be carried out in such a manner as will result in a minimum of damage to wildlife resources.

It appears that the lands sought are in the Panther Swamp National Wildlife Refuge. The applicable regulation, 43 CFR 3101.3-3, has been interpreted to mean that oil and gas leasing is precluded only of lands embraced in a withdrawal for the protection of all species of wildlife within a particular area. Esdras K. Hartley, 57 IBLA 319 (1981). We do not know from the present record whether the lands sought are within that category. If the lands sought are not in a withdrawal as defined in 43 CFR 3101.3-3, then oil and gas leasing is not precluded by 43 CFR 3101.3-3.

[2] We have held that the Secretary may exercise his discretion under the mineral leasing laws to reject oil and gas lease offers where the land is used as a habitat for endangered animals. Esdras K. Hartley, *supra*; Carol Lee Hatch, 50 IBLA 80 (1980); Dell K. Hatch, 34 IBLA 274 (1978). Where the record indicates that the development of an oil and gas field would be incompatible with this public purpose, BLM's decision not to issue the lease will be affirmed in the absence of compelling reasons for its modification or reversal. *Id.* However, in the absence of a refuge being withdrawn as defined in 43 CFR 3101.3-3, with respect to acquired land lease offers a recommendation by FWS that oil and gas leasing is incompatible with the purpose for which the national wildlife refuge was established is not conclusive, even though the land is under FWS jurisdiction. See Esdras K. Hartley, *supra*; Kent E. Peterson, 30 IBLA 199 (1977); Daphine Shear, 29 IBLA 33 (1977), and cases cited therein. Where acquired lands are under the jurisdiction of a bureau of the Department of the Interior, it is the Secretary's consent which is necessary to leasing of the land. *Id.*

In sum, BLM needs to determine whether leasing the lands sought is precluded because they are embraced in a withdrawal as defined in 43 CFR 3101.3-3; or, if they are not in such withdrawal, whether, in the discretion of the Secretary, the lands sought should be leased. The case file is insufficient for us to decide these questions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

from is vacated and the case file returned to the Eastern States Office for action consistent with the decision herein.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

